

SUBCHAPTER J : ENFORCEMENT, SUPERVISION AND RECEIVERSHIP

§291.141. Supervision of Certain Utilities.

(a) The commission may place a utility under supervision where:

- (1) the utility has exhibited gross or continuing mismanagement; or
- (2) the utility has exhibited gross or continuing noncompliance with Chapter 13 of the Water Code or commission rules; or
- (3) the utility has exhibited noncompliance with commission orders; and
- (4) notice has been provided to the utility advising the utility of the proposed commission action, the reasons for the action and giving the utility an opportunity to request a hearing.

(b) The commission may require the utility to abide by conditions and requirements, including but not limited to:

- (1) management requirements;
- (2) additional reporting requirements;
- (3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets;
- (4) a requirement that the utility place all or part of the utility's funds and revenues into an account in a financial institution approved by the executive director and restricting use of funds in that account to reasonable and necessary expenses;
- (5) operational requirements;
- (6) priority order of payments or obligations; and,
- (7) limitation of payment for owner's or owner's family member's expenses or salaries or payments to affiliates.

(c) Any utility under supervision may be required to obtain the approval of the executive director before taking any action that may be restricted under subsection (b) of this section. If the commission in its order has required prior approval, any action or transaction which occurs without that approval may be voided by the executive director.

§291.142. Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.

(a) The commission, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that has:

(1) discontinued or abandoned operations or the provision of services; or

(2) is being referred to the attorney general for the appointment of a receiver under the Texas Water Code, §13.412 for:

(A) having abandoned operation of its facilities; or

(B) having violated a final order of the commission; or

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The commission may appoint a person under this section by emergency order, and notice of the action is adequate if the notice is mailed or hand-delivered to the last known address of the utility's headquarters. A corporation may be appointed a temporary manager.

(c) Abandonment includes but is not limited to:

(1) failure to pay utility bills; or

(2) failure to make necessary and timely repairs to maintain continuous and adequate service.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

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Effective January 10, 1996

§291.143. Operation of a Utility by a Temporary Manager.

(a) By emergency order under the Texas Water Code, §13.4132, the commission may appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations, or which is being referred to the Attorney General for the appointment of a receiver under the Texas Water Code, §13.412.

(b) A person appointed under this section has the powers necessary and shall ensure the continued operation of the utility and the provision of continuous and adequate services to customers. The duties of the temporary manager appointed by the commission will include:

- (1) reading meters;
- (2) billing for utility services;
- (3) collecting revenues;
- (4) disbursing funds;
- (5) requesting rate increases if needed;
- (6) sampling;
- (7) making necessary repairs; and,

(8) performing other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The temporary manager shall serve a term of one year, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the executive director or the temporary manager and granted by the commission;

(3) the temporary manager is discharged from his responsibilities by the commission;
or,

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the Attorney General.

(e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that

continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(h) The temporary manager shall report to the executive director on a monthly basis. This report shall include:

- (1) an income statement for the reporting period;
- (2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and,
- (3) any other information required by the executive director.

(i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

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